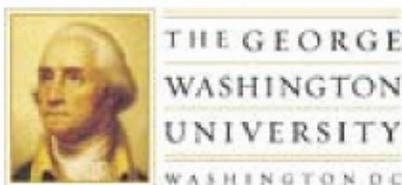


The Burger Court Opinion Writing Database

Union Labor Life Insurance Co. v. Pireno
458 U.S. 119 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 24, 1982

Re: (81-389 - Union Labor Life Insurance Co. v. Pireno
(
(81-390 - N.Y. State Chiropractic Association v. Pireno)

Dear Bill:

I join your dissent of June 24.

Regards,



Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 3, 1982



RE: No. 81-389 & 390 Union Labor Life Ins. Co. v. Pireno
N.Y. State Chiropractic v. Pireno
No. 81-150 & 546 Northern Pipeline & U.S. v. Marathon
Pipeline Company

Dear Chief:

I'll undertake the opinions for the Court in the above
cases.

Sincerely,

A handwritten signature, likely "Brennan", is written in cursive below the word "Sincerely,".

The Chief Justice
cc: The Conference

~~ME~~
~~from me~~
~~MM~~

To: The Chief Justice
Justice White
✓ Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: 20 May 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-389 AND 81-390

UNION LABOR LIFE INSURANCE COMPANY,
PETITIONER,

81-389

v.

A. ALEXANDER PIRENO

NEW YORK STATE CHIROPRACTIC ASSOCIATION,
PETITIONER,

81-390

v.

A. ALEXANDER PIRENO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[May —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

In this case we consider an alleged conspiracy to eliminate price competition among chiropractors, by means of a "peer review committee" that advised an insurance company whether particular chiropractors' treatments and fees were "necessary" and "reasonable." The question presented is whether the alleged conspiracy is exempt from federal anti-trust laws as part of the "business of insurance" within the meaning of the McCarran-Ferguson Act.¹

¹59 Stat. 33, as amended, 15 U. S. C. §§ 1011-1015. The Act provides in relevant part:

"2(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

"2(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, . . . unless such Act specifically relates to the business of insurance. . . .

Join

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 24, 1982.

Nos. 81-389, 81-390 -- Union Labor Life
Ins. Co. v. Pireno.

Dear Lewis,

Thank you for your note in this case. As I said on the telephone, I had already decided, at John's suggestion, to add a footnote along the lines you mention. I enclose a copy of the letter that I had sent to him. I am thinking of expanding that footnote to reflect the first three sentences of the draft concurrence that you sent along with your note. The footnote, which would appear at page 13, at the end of the crossover paragraph, after the word, "case," would read as follows:

fn. "As noted earlier, see p. 5, supra, the merits of respondent's Sherman Act claims are not before us. Petitioners argue that peer review committees of the kind involved in this case actually do serve a useful and procompetitive purpose. This argument goes to the merits of the antitrust case, which have not yet been addressed by the courts below. We express no view on the general issue whether professional committees may, consistent with the antitrust laws, review fees, treatment practices, and the like."

Do you think that this addition would be satisfactory to you? Of course, any further suggestions are welcome.

Sincerely,

Bill

Justice Powell.
Copy to Justice Stevens.

Brennan II

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 24, 1982

RE: Nos. 81-389, 390 - Union Labor Life Insurance Co. v.
Pireno

Dear John:

Thank you so much for your suggestion in the above. Do you think that the following, to appear at page 13, at the end of the crossover paragraph, after the word "case", will do it?

fn. "We express no view on the general issue whether professional committees may, consistent with the antitrust laws, review fees, treatment practices, and the like."

As always, I welcome any further suggestions.

Sincerely,

Bren

Justice Stevens

Bren II

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 25, 1982.

No. 81-389 -- Union Labor Life Ins. Co. v. Pireno --
Addition to Justice Brennan's Opinion.

In response to Bill Rehnquist's circulation of yesterday, I intend to make the following addition to my opinion for the Court.

At page 13, at the end of the paragraph, new footnote:

"8. The premise of the dissent is that NYSCA's Peer Review Committee actually constitutes 'the claims adjustor' in this case. See post, at 4. From this premise the dissent reasons that since 'claims adjustment is part and parcel of the "business of insurance" protected by the McCarran-Ferguson Act,' ibid., it necessarily follows that the peer review practices at issue in this case must enjoy the Act's exemption. The fatal flaw in this syllogism is that NYSCA's Peer Review Committee is not the claims adjustor. As the Court of Appeals noted, 'Opinions of the committee are not binding unless the parties agree beforehand that they will be.' 650 F. 2d, at 388. Thus in a case such as the present one, ULL is perfectly free to disregard the Committee's evaluation. Even if ULL were to act upon the Committee's opinion, the non-binding nature of the Committee's evaluation means that, at most, peer review is merely ancillary to the claims adjustment process. We see no reason that such ancillary activities must necessarily enjoy the McCarran-Ferguson exemption from the anti-trust laws. Unlike activities that occur wholly within the insurance industry--such as the claims adjustment process itself--the ancillary peer re-

view practices at issue in this case 'involve parties wholly outside the insurance industry.' See Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S., at 231. Thus peer review falls afoul of the third Royal Drug criterion in a way in which pure claims adjustment activities cannot."

Footnote 8 of the current draft will accordingly be renumbered footnote 9.

Sincerely,

W. J. B., Jr.
W. J. B., Jr.

The Conference.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 25, 1982

Re: 81-389 and 81-390 -
Union Labor Life Insurance Co. v. Pireno;
New York State Chiropractic Assn v. Pireno

Dear Bill,

Please join me.

Sincerely yours,



Justice Brennan

Copies to the Conference

cpm

85 JUN 25 1982

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 26, 1982

Re: No. 81-389 and 81 - 390 - Union Labor Life
Insurance Co. v. Pireno and New York State
Chiropractic Assoc. v. Pireno

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 28, 1982

Re: No. 80-389) Union Labor Life Insurance Co. v. Pireno
No. 81-390) N.Y. State Chiropractic Ass'n v. Pireno

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

May 24, 1982

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

81-389 Union Labor Live v. Pireno
81-390 New York State Chiropractic Association
v. Pireno

Dear Bill:

I intend to join your opinion, but this would be easier for me if you added a note making clear that in the antitrust litigation - not yet addressed by the courts below - the validity of the use of peer committees remains to be decided.

I dictated the enclosed draft of a concurring opinion that sets out more fully the sort of reservation I think is appropriate. The substance of what I have written is taken from the Solicitor General's brief.

I have no doubt myself that in many situations peer committee review can be in the public interest. My understanding is that similar type committees have been useful in the settlement - without litigation - of malpractice suits against physicians and their insurers.

I would prefer not to file a concurring opinion, and will not do so if you are disposed to make somewhat clearer the limited scope of our opinion.

Sincerely,



Justice Brennan

LFP/vds



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

57:49 45 YAM 58'

May 24, 1982

81-389 Union Labor Life v. Pireno
81-390 New York State Chiropractic v. Pierno

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: 6/24/82

Recirculated: _____

Nos. 81-389 & 81-390 - Union Labor Life Insurance
Co. v. Pireno

JUSTICE REHNQUIST, dissenting.

Purporting to rely upon our recent decision in Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205 (1979), the Court today exposes to antitrust liability an aspect of the business of insurance designed to promote fair and efficient claims settlement. The Court reaches this conclusion by determining that the peer review process does not spread risk, is not an integral part of the insurance relationship, and is not limited to entities within the insurance industry. Because I find the claims adjustment function of the peer review committee to be at the heart of the relationship between insurance companies and their policyholders, I conclude that such committees are clearly within the sphere of insurance activity which the McCarran-Ferguson Act intended to protect from the effect of the antitrust

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 21, 1982

Re: 81-389 & 81-390 - Union Labor Life
Insurance v. Pireno

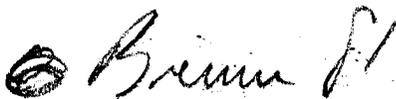
Dear Bill:

The point that you make in the penultimate paragraph of your opinion is certainly valid--that McCarran-Ferguson was not intended to exempt restraints in non-insurance markets, and the alleged consequences of peer review are in such a market. I am slightly concerned, however, that the tone of the paragraph implies disapproval of the peer review practice. At conference I think there was general agreement that professional committees could review fees and the like. I wonder if you might want to add a note or a sentence to the effect that we are not expressing any opinion on the issue. With this one reservation, I am prepared to join your opinion.

Respectfully,



Justice Brennan



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1982

Re: 81-389 & 81-390 - Union Labor Life
Insurance Co. v. Pireno

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 24, 1982

No. 81-389 & 81-390 Union Labor Life Insurance
v. Pireno

Dear Bill,

Please join me in your dissent.

Sincerely,



Justice Rehnquist

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